

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4005

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATRICK RAYMOND PEER,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., District Judge. (CR-03-27)

Submitted: June 23, 2004

Decided: July 7, 2004

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Richard H. Warder, Greenville, South Carolina, for Appellant. J. Strom Thurmond, Jr., United States Attorney, Regan A. Pendleton, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Patrick Raymond Peer pleaded guilty to unlawful possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (2000). Peer was sentenced to twenty-seven months incarceration, two years of supervised release, and a \$100 special assessment. Peer timely appealed.

On appeal, Peer asserts the district court erred at sentencing in denying his motion for downward departure under U.S. Sentencing Guidelines Manual § 5K2.16 (2003). This Court lacks jurisdiction to review the district court's decision not to depart downward unless the district court mistakenly believed that it lacked authority to depart downward. United States v. Bayerle, 898 F.2d 28, 31 (4th Cir. 1990). The record indicates the district court believed it possessed authority to grant a downward departure, but it chose not to do so.

Accordingly, we dismiss Peer's appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid in the decisional process.

DISMISSED